

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

THEODORE MAYES

PLAINTIFF

V.

CIVIL ACTION NO. 2:08cv27-MTP

RONALD KING, et al.

DEFENDANTS

SCHEDULING AND CASE MANAGEMENT ORDER

The parties appeared and participated in an omnibus hearing before the undersigned United States Magistrate Judge on August 22, 2008. Plaintiff appeared *pro se*, and Leonard Charlton Vincent, Pelicia Everett Hall, and Charles Irvin appeared on behalf of the following Defendants: Ronald King, Jason Holmes, Kenneth Mayo, and Mitchell Wade. The Court scheduled this hearing for the combined purposes of conducting a *Spears*¹ hearing; a scheduling/case management hearing; and a discovery conference. The Court's purpose in conducting the hearing is to ensure the just, speedy and inexpensive determination of this *pro se* prisoner litigation. After due consideration of the issues involved in this case and the requests for discovery, the Court does hereby find and order as follows:

JURISDICTION AND SUMMARY OF CLAIMS

Jurisdiction of this case is based upon 42 U.S.C. § 1983. Plaintiff is currently incarcerated in the South Mississippi Correctional Institution in Leakesville, Mississippi, after having been convicted of kidnaping, rape, and embezzlement in Hinds County. As alleged in his

¹*Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

complaint and as clarified and amended by his sworn testimony during the *Spears* hearing,² Plaintiff alleges an excessive force claim against Defendant Jason Holmes. As set forth below, this is the only remaining claim pending before the Court, and no further amendments will be allowed absent a showing of good cause so that this case may proceed to disposition.

PENDING MOTIONS

Defendants' Motion to Dismiss [15] for Failure to Exhaust Available Administrative Remedies is GRANTED in part and DENIED in part for the reasons set forth in the Court's Report and Recommendation [18] entered on July 18, 2008.³ Accordingly, Plaintiff's claims against Ronald King, Kenneth Mayo, Shay Bolton, and Mitchell Wade⁴ are hereby dismissed without prejudice for Plaintiff's failure to exhaust.

DISCOVERY ISSUES

1. Defendant Holmes is directed to produce to Plaintiff copies of the following: any RVR records or incident reports relating to the alleged assault in August of 2007; and all of Plaintiff's medical records from August 1, 2007 until the present. Defendant is directed to

²See *Hurns v. Parker*, 165 F.2d 24, No. 98-60006, 1998 WL 870696, at *1 (5th Cir. Dec. 2, 1998); *Riley v. Collins*, 828 F.2d 306, 307 (5th Cir. 1987) (stating that plaintiff's claims and allegations made at *Spears* hearing supersede claims alleged in complaint).

³Since the entry of the Report and Recommendation [18] on July 18, 2008, the parties consented to have the undersigned U.S. Magistrate Judge conduct all proceedings in this matter pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. See Consent [26] and Order of Reference [27]. Accordingly, the undersigned now has authority to enter final orders in this matter. See 28 U.S.C. § 636(c); Fed. R. Civ. P. 73. The court also notes that Plaintiff did not object to the Report and Recommendation [18] entered on July 18, 2008.

⁴Plaintiff named "Michael" Wade as a defendant in his complaint. However, the return summons for Defendant Wade indicates that the defendant's correct name is "Mitchell" Wade. See Return Summons [13].

produce a copy of the documents as set forth above by September 22, 2008.

2. There are no other discovery issues pending at this time. The discovery allowed herein will fairly and adequately develop the issues to be presented to the Court, and no other discovery is deemed reasonable or appropriate considering the issues at stake in this litigation. *See* Federal Rules of Civil Procedure 26(b)(1). The parties shall not propound additional discovery requests unless leave of Court is requested and obtained.

3. The deadline for the filing of motions (other than motions *in limine*) is November 3, 2008.

SO ORDERED AND ADJUDGED this, the 27th day of August, 2008.

s/ Michael T. Parker

United States Magistrate Judge